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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,809	12/23/2005	Christophe Mathoulin	0573-1020	5678

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EXAMINER	
WOODALL, NICHOLAS W	
ART UNIT	**PAPER NUMBER**
3733	

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/538,809	MATHOULIN ET AL.	
	Examiner	Art Unit	
	Nicholas Woodall	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10,11 and 13-18* is/are rejected.

7)☒ Claim(s) *9 and 12* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 June 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:
(1) if a machine or apparatus, its organization and operation;
(2) if an article, its method of making;
(3) if a chemical compound, its identity and use;
(4) if a mixture, its ingredients;
(5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the abstract uses a phrase that implies, i.e. "The invention relates...". Also, the abstract is written in claim format instead of a narrative format. Correction is required. See MPEP § 608.01(b).

Information Disclosure Statement

4. The information disclosure statement filed June 13th, 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. The examiner did not receive legible copies of the two foreign documents listed on the information disclosure statement.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Huebner (U.S. Publication 2004/0127901).

Regarding claim 1, Huebner discloses a device comprising lateral holes and a flat face (reference Figure 1 below). The holes are at an angle to direct the screws

towards the outside edge of the plate. Huebner shows various embodiments of the device, one including a flat face that contacts the surface of the bone. Regarding claim 2, Huebner further discloses a device that is circular in shape. Regarding claims 3 and 4, Huebner further discloses a device wherein the upper face comprises a recess (claim 3). The recess occupies a majority of the upper face of the device and is the form of a hollow spherical cap (claim 4). Regarding claim 5, Huebner further discloses a device further comprising at least one screw hole in the form of a hollow spherical section and a screw with a matching head to allow a multidirectional orientation of the screw (reference Figure 2 below). Regarding claim 6, Huebner discloses the device further comprising a number of holes close to the number of bone being treated. In one embodiment, Huebner shows a device comprising four holes to allow screws to pass into four different bones.

Figure 1

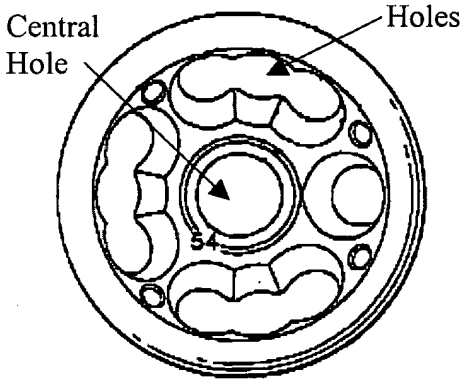
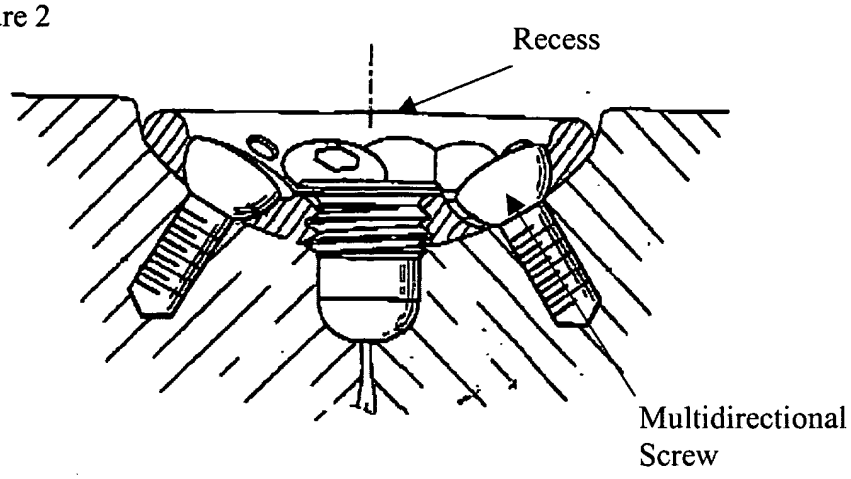


Figure 2



Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huebner (U.S. Publication 2004/0127901) in view of Huebner (U.S. Publication 2004/0102778).

Regarding claim 7, Huebner discloses a device further comprising a central hole that is capable of allowing a sliding engagement between the device and a spindle. Huebner fails to disclose the device comprising markings on the periphery of the device. Huebner teaches a plate comprising reference marks in order to indicate an angular or linear disposition (page 5 paragraphs 67 and 68 and page 6 paragraphs 68 and 69). It would have been obvious to one having ordinary skill in the art at the time the invention

was made to manufacture the device of Huebner with reference markings in view of Huebner in order to indicate an angular or linear disposition.

9. Claims 8 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huebner (U.S. Publication 2004/0127901) in view of Huebner (U.S. Publication 2004/0102778) further in view of Weiss (U.S. Patent 6,179,839).

Regarding claims 8 and 13-18, the combination of Huebner and Huebner disclose the invention as claimed except for a set of instruments comprising a reamer. Weiss teaches a set of instruments comprising a reamer in order to rasp or burr away bone (column 5 lines 36-55). It would have been obvious to one having ordinary skill in the art at the time of the invention to manufacture the device of Huebner as modified by Huebner with a set of instruments comprising a reamer in view of Weiss in order to rasp or burr away bone.

10. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huebner (U.S. Publication 2004/0127901) in view of Huebner (U.S. Publication 2004/0102778) further in view of Weiss (U.S. Patent 6,179,839) further in view of Griner (U.S. Publication 2004/0039450).

Regarding claims 10 and 11, the combination of Huebner, Huebner, and Weiss discloses the invention as claimed except for providing a provisional implant identical to the actual implant. Griner teaches using provisional implants that are identical to the actual implant in order to test the fit and alignment with a bone (page 1 paragraph 002). It would have been obvious to one with ordinary skill in the art at the time the invention was made to manufacture the device of Huebner modified by Huebner further modified

by Weiss with an identical provisional implant in view of Griner in order to test the fit and alignment with a bone.

Allowable Subject Matter

11. Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited reference the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER